

Planning

Growth & Development

Delegated officer report for planning application

Application no. 140156/LE/2024
Date registered valid: 20 June 2024
Proposal: Erection of a single storey rear extension.
Address: 16 Western Circle, Manchester, M19 1HH
Ward(s): Burnage Ward

Applicant: Mr Kleanthis Kasaras
Agent (if any): Mr Andrew Nicholson Nicholson Associates UK Ltd
Case officer: Robert Tyrer
Tel: 0161 234 4068
Email: robert.tyrer@manchester.gov.uk

Recommendation: Refuse
Date of recommendation: 14 August 2024

Application details

Type of application: Certificate Lawful Development Existing

Development type: Certificates of lawfulness

Date of site visit: 14 August 2024

Standard consultations:

No consultations have been printed and sent.

Neighbour notifications

Printed: 12 July 2024 Expired: 2 August 2024

Site notice

No site notice has been produced

Press advert

No press advert had been published

Departure from Development Plan: No

Environmental Statement: Not required

Description of site/building

The application site relates to a two storey end terraced dwellinghouse. The property is brick built with a front facing hipped roof, which protrudes further forward than the adjoining neighbour. This change in design makes the dwelling appear more prominent in the street scene.

The property benefits from off street car parking and both front and rear gardens for private amenity space.

Listed building: Not applicable

Conservation area: Not applicable

Tree Preservation Order: Not applicable

Description of area

The area surrounding the application site is residential in nature arranged around a circular highway which form one of two identical estate designs within this area. The dwellings are predominantly two storey semi-detached properties, however as described there are differences in the design of the dwellings.

Description of development

The applicant is seeking a certificate of existing lawful development for a single storey rear extension.

Consultations & Notification Responses

Publicity – Notification letters were sent to nearby residential properties (see appendix 1 for the list of properties).

Local residents/public opinion- No objection

Issues

Legislative Issues

Sections 191 and 192 of the Town and Country Planning Act 1990 provide for anyone (not just a person with a legal interest in the land) to apply to the local planning authority (LPA) for a lawful development certificate (LDC). A certificate is a statutory document certifying:

(1) in the case of an application under section 191, the lawfulness, for planning purposes, of existing operations on, or use of land, or some activity being carried out in breach of a planning condition; or

(2) in the case of an application under section 192, the lawfulness of proposed operations on, or use of land.

The onus of proof in regard to (1) is firmly on the applicant and the issue of a certificate will depend on the on factual evidence provided about the history and planning status of the building or other land and the interpretation of any relevant planning law or judicial authority. The relevant test of the evidence in this matter is “the balance of probability” and the applicants own evidence does not need to be corroborated by independent evidence. If the LPA have no evidence to contradict the applicants version of events or make them less than probable, there is no good reason to refuse the issue of a certificate.

In regard to (2), this provides that, if the LPA are supplied with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect; and, in any other case, they shall refuse the application.

In short, the purpose section 192 is to enable any person who wishes to find out whether any proposed use or operations would be lawful to apply to the LPA for that purpose

The application needs to describe the proposal with sufficient clarity and precision to enable the LPA to understand (from a written description and plans) exactly what is involved in the proposal; and to submit whatever supporting information or legal submission that are to be relied upon in order to satisfy the LPA that a certificate should be granted for the proposal.

In making their decision on an application under section 192, the LPA ask themselves the hypothetical question - *"If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"* In doing so, the LPA will not only consider whether the proposal would involve "development" requiring an application for planning permission, but whether it would involve a breach of any existing condition or limitation imposed on a grant of planning permission which has been acted upon, and which therefore constrains what can be done on the land. The LPA will not make a proposal fit a scenario; the only question is whether the proposal made by the applicant is lawful at the time of submission.

The Application

This application is pursued under subsection (1) of section 191 which provides for an application to determine whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land is lawful for planning purposes.

The applicant is seeking a certificate of existing lawful development for a single storey rear extension.

The development for rear extensions are considered under Class A of the Town and Country (General Permitted Development) Order 2015 (as amended) - the relevant legislation when determining the enlargement, improvement or other alterations to dwellinghouses.

The Assessment

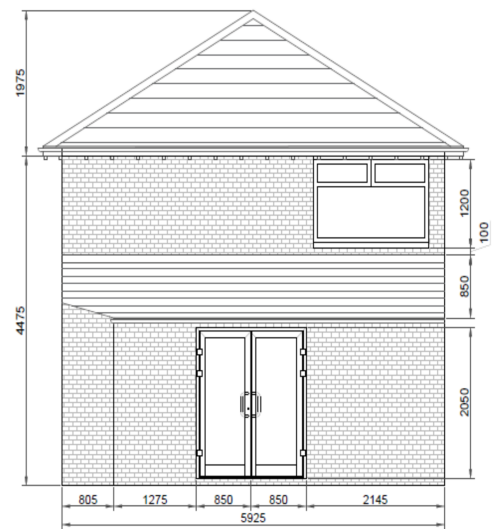
The drawings submitted by the applicant differ to the extension that has been built on site. Drawing NA2023-002-002 Revision D "Proposed Side Elevation from No. 14 Western Circle", shows that the roof of the extension has a steeper pitch than what has been constructed on site (see image 1)

At the rear drawings NA2023-002-002 Revision D and NA2023-002-001 Revision D show a different rear elevation compared to the one that has been built (image 2), the rear door and windows are different, the pitch of the roof is steeper than in reality and nor does the drawings show a roof overhang where the corner has been chamfered.



**Proposed Side Elevation
From No.14 Western Circle**

Image 1 Comparison between site visit photograph and drawing as viewed from side with no.14 Western Circle



Proposed Rear Elevation

Image 2 Comparison between site visit photograph and drawing of the rear of the dwellinghouse.

Therefore, in making their decision on an application under section 192, the LPA ask themselves the hypothetical question - *"If this proposed change of use had already occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"* In this case the drawings are materially different as described earlier within the report and do not reflect what has been built on site and therefore cannot be relied upon. This is evident from the information available to the LPA in the form of case officers site photographs demonstrates this and the application for the certificate should be refused.

Other Legislative Requirements Equality Act 2010

Section 149 (Public Sector Equality Duty) of the Equality Act 2010 requires due regard to the need to: Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act and; Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it. The Equality Duty does not impose a legal requirement to conduct an Equality Impact Assessment. Compliance with the Equality Duty involves consciously thinking about the aims of the Equality Duty as part of the process of decision-making.

Human Rights Act 1998 considerations

This application needs to be considered against the provisions of the Human Rights Act 1998. Under Article 6, the applicants (and those third parties, including local residents, who have made representations) have a right to a fair hearing and to this end the local planning authority must give full consideration to their comments.

Protocol 1 Article 1, and Article 8 where appropriate, confer(s) a right of respect for a person's home, other land and business assets. In taking account of all material considerations, including Council policy as set out in the Core Strategy and saved policies of the Unitary Development Plan, the Director of Planning, Building Control & Licensing has concluded that some rights conferred by these articles on the applicant(s)/objector(s)/resident(s) and other occupiers and owners of nearby land that might be affected may be interfered with but that that interference is in accordance with the law and justified by being in the public interest and on the basis of the planning merits of the development proposal. She believes that any restriction on these rights posed by the recommendation given is proportionate to the wider benefits of and that such a

decision falls within the margin of discretion afforded to the Council under the Town and Country Planning Acts.

Recommendation: Refuse

Condition(s) to be attached to decision for approval OR Reasons for recommendation to refuse

The single storey rear extension as shown on drawings NA2023-002-002 Revision D and NA2023-002-001 Revision D is materially different and does not reflect the extension that has been built on site; therefore the drawings cannot be relied upon. This is evident from the information available to the LPA in the form of case officers site photographs taken on 14 August 2024.

Appendix 1 – List of consultees & neighbours notified

14 Western Circle, Manchester, M19 1HH
12 Western Circle, Manchester, M19 1HH
18 Western Circle, Manchester, M19 1HH
10 Western Circle, Manchester, M19 1HH
11 Western Circle, Manchester, M19 1LU
8 Western Circle, Manchester, M19 1HH

Appendix 2 – Planning constraints

Article 4 Direction - Removal Of PD Rights Change Of Use From Class C3 To Class C4
Aircraft Safeguarding Zone - Aircraft Safeguarding Zone - All Exceeding 90M
Susceptible to Surf Water Flood (Less) -
Area Team Boundary - Name: SOUTH AREA